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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,156	04/08/2004	Guenther A. Mohr	KLAUS2.007AUS	1177
20995 7590 08/08/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER SHAPIRO, JEFFERY A				
ART UNIT 3653		PAPER NUMBER		
NOTIFICATION DATE 08/08/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/822,156

Applicant(s)

MOHR ET AL.

Examiner

JEFFREY A. SHAPIRO

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-33 and 35-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 2, 4-7, 8-21 and 23-44** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al (US 2002/0173875) in view of Polkinghorne (US 5,809,785).

Regarding **Claims 1, 4 and 15**, Wallace discloses an unmanned dispensing station for laboratory items having an input terminal (48 or 340), a central processing unit (CPU) (46) with a memory, user id/password entry (3610) and a data input/output port with communication interface, as illustrated in figures 3-5c. Note that laboratory items are construed to include drugs as well as physical instruments. In paragraph 136, Wallace further discloses a remotely accessed cabinet/dispenser (20) with locks (28) that are accessed by an authorized user who enters said password.

Wallace further discloses sensors (36) for detecting a withdrawal of an item in a group of items, each group located in a column (78). Transaction information is disclosed as being manipulated by the system from database as mentioned at paragraph 405 and illustrated at figure 99c.

Regarding **Claims 1 and 3**, Wallace discloses a use of a password software module as an access device in paragraph 408. In paragraph 329, Wallace discloses an

access device in the form of a magnetic card reader (1672) and a personal identification module in the form of smart card or debit card. Paragraph 329 mentions that magnetic card reader reads personal data from a user's card and compares it with data held in a database. Upon a satisfactory match, a dispense signal is sent and the user receives his prescription.

Regarding **Claim 4**, Wallace's card reader (1672) can be construed as having an output interface adapted for reading to and from a smart card, since this is how smart cards disclosed by Wallace are known to work.

Regarding **Claim 5**, Wallace discloses a biometric data scanner in the form of a fingerprint at paragraphs 130, 311, 329, 411 and 413.

Regarding **Claims 6**, Wallace discloses a display and user interface with an area for entering a user ID. Note that said magnetic card reader (1672) is considered to be adapted to transfer information to and from a smart card as well as to and from the CPU memory.

Regarding **Claim 8**, Wallace discloses a printer (56).

Regarding **Claims 9, 11 and 12**, Wallace discloses using a wireless network at paragraphs 147, 230-232, 338, 419 and Claim 61.

Regarding **Claim 10**, Wallace discloses using email as a means of communication of data at paragraph 155.

Regarding **Claims 13 and 15**, Wallace discloses movable trays or drawers at paragraph 11, 61, 148, 150, 327, 328 and 331-336.

Regarding **Claim 14**, Wallace discloses restocking routines at paragraphs 3, 89, 144, 192, 248, 366 and 367.

Regarding **Claims 16-18, 33** Wallace discloses an unmanned dispensing station for laboratory items having an input terminal (48 or 340), a central processing unit (CPU) (46) with a memory, user id/password entry (3610) and a data input/output port with communication interface, as illustrated in figures 3-5c. Note that laboratory items are construed to include drugs as well as physical instruments. In paragraph 136, Wallace further discloses a remotely accessed cabinet/dispenser (20) with locks (28) that are accessed by an authorized user who enters said password.

Wallace further discloses sensors (36) for detecting a withdrawal of an item in a group of items, each group located in a column (78). Transaction information is disclosed as being manipulated by the system from database as mentioned at paragraph 405 and illustrated at figure 99c.

Regarding **Claims 21, 23 and 24**, Wallace discloses a use of a password software module as an access device in paragraph 408. In paragraph 329, Wallace discloses a an access device in the form of a magnetic card reader (1672) and a personal identification module in the form of smart card or debit card.

Regarding **Claim 26**, Wallace discloses a biometric data scanner in the form of a fingerprint at paragraphs 130, 311, 329, 411 and 413.

Regarding **Claims 7 and 25**, Wallace discloses a display and user interface with an area for entering a user ID. Note that said magnetic card reader (1672) is considered to be adapted to transfer information to and from a smart card as well as to

and from the CPU memory. Further regarding Claim 7, note that a user having a user id is considered to belong to the group of those allowed access to Wallace's apparatus.

Regarding **Claim 20**, Wallace discloses a printer (56).

Regarding **Claim 37**, Wallace discloses using a wireless network at paragraphs 147, 230-232, 338, 419 and Claim 61.

Regarding **Claims 28 and 29**, Wallace discloses using email as a means of communication of data at paragraph 155.

Regarding **Claims 31 and 32**, Wallace discloses movable trays or drawers at paragraph 11, 61, 148, 150, 327, 328 and 331-336.

Regarding **Claims 19 and 30**, Wallace discloses restocking routines at paragraphs 3, 89, 144, 192, 248, 366 and 367.

Regarding **Claims 27 and 35-36**, Wallace discloses transmission by the internet and in a network at figures 3-5c.

Wallace discloses the dispensing system described above.

Regarding **Claims 1, 16, 33 and 35-44**, Wallace does not expressly disclose, but Polkinghorne discloses using a refrigerated dispensing device (200) having two compartments, the entire refrigeration device construed as a "zone", wherein each item in a different compartment is temperature controlled to different temperatures. See Polkinghorne, col. 6, lines 23-33.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used Polkinghorne's refrigerated dispenser in Wallace's dispensing

system, for the purpose of maintaining blood and pharmaceutical items at different temperatures. See Polkinghorne, col. 6, lines 23-33.

3. Claims 3 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace in view of Polkinghorne and further in view of Waterbury (US 3,896,266).

Wallace discloses the dispensing system described above. Wallace does not expressly disclose, but Waterbury discloses holding onto a user's card (personal identification module) until a vending transaction is complete for the purpose of securing the dispensing system. See Waterbury, col. 18, lines 12-63.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have kept the user's card within the card reader until the transaction was completed, again, for the purpose of securing the dispensing system.

Response to Arguments

4. Applicant's arguments with respect to Claims 1, 3-33 and 35-44 have been considered but are moot in view of the new ground(s) of rejection.

Applicant asserts that Applicant's claims do not read on Wallace since they do not teach dispensing laboratory items. However, note that according to MPEP 2115, the material worked on by an apparatus does not limit an apparatus claim, such as recited in Claims 1, 3-15, 33 and 35-38. The items stored in the claimed apparatus can be anything obvious to store in such a secured refrigeration device that must be maintained at a particular temperature.

As for method claims 16-32, note that it would have been obvious to include laboratory items in Wallace's dispensing system since Hospitals require use of

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laboratory items. Such items as blood coagulation solutions, or other laboratory solutions and chemicals can also be construed as laboratory supplies. If such laboratory items are boxed or unboxed, it makes no difference as to the structure and performance of Wallace's apparatus. Thus, at the very least, it would have been obvious to have included laboratory supplies since such supplies are construed to also include medical products as well as the fact that any item boxed or non-boxed may be handled by Wallace's apparatus.

Regarding Applicant's arguments concerning Waterbury and Claim 3, note that Wallace discloses using a smart card at paragraph 329. Paragraph 329 mentions a magnetic card reader (1672), which, although not expressly stated as being used with the smart card, is representative of a reader that must be used in order to use such a smart card as mentioned at paragraph 329.

Although the data content of the smart card is not expressly discussed, it would have been obvious to have incorporated various identification information on Wallace's smart card since one ordinarily skilled would have recognized in light of Wallace at paragraph 329, that placing the information in Wallace's smart card memory would consolidate data and negate the requirement for the use of multiple cards, such as an identification card as separate from a credit card as still further separate from a medication provider card. It therefore would have been obvious to combine Wallace with Waterbury in light of Waterbury's teaching of locking or releasing a personal credit card which is considered to be a personal identification module since it contains a code which is particular to the person holding the card.

Regarding Claim 4, Applicant's claim recites that "said access device comprises an output section **adapted** to write dispensing transaction data to said personal identification module". Emphasis provided.

Where Claim 4 only calls for the access device to be adapted to write dispensing transaction data to the personal identification module, Wallace's smart card accepts data from a data interface terminal, i.e., an access device, as represented by Wallace's magnetic reader.

Regarding Claims 11 and 12, note again that Wallace clearly states at paragraphs 147, 230-232, 338, 419 and Wallace's Claim 61 use of a wireless network for communication between Wallace's device and other computers.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY A. SHAPIRO whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Shapiro/
Primary Examiner, Art Unit 3653

August 3, 2008